

REMARKS

Claims 1-17 and 19-26 remain pending in the application.

The office action maintains its rejection of claims 1, 20, and 23 under 35 U.S.C. § 102(b) as being anticipated by Takeuchi (US4622706). In response to the preceding office action the Applicant had argued that, although Takeuchi suggests providing a seat and then, in a separate step, providing a mat on the seat (a mat that includes expandable chambers and pressure and exhaust systems), Takeuchi neither teaches nor discloses a step of providing a seat that, itself, includes each of those structures.

The present office action now argues that providing a mat-covered seat satisfies the claim limitation “providing a seat including more than one expandable chamber”. The office action also argues that “the features upon which applicant relies (i.e., a seat that *incorporates* these structures) are not recited in the rejected claim(s).” Accordingly, it appears that the Examiner has drawn a distinction between a “seat including” and “a seat incorporating” – that when a first structure *includes* a second structure, the second structure need not necessarily be a part of or “incorporated” into the first structure, but may, instead, be supported by or laid on top of the first structure. In light of the Examiner’s interpretation of the word “including,” the Applicant has amended claims 1 and 20 to more clearly indicate that the step of providing a seat includes providing a seat that *incorporates* expandable chambers.

The Applicant maintains that Takeuchi doesn’t anticipate amended claims 1 or 20, and that claim 23 is allowable because it now depends from an allowable base claim.

The office action rejects claims 1-3, 9, 16, 19-23, 25, and 26 under 35 U.S.C. §103(a) as being unpatentable over Bullard in view of Thomas et al. (US 6,212,719).

Regarding claims 1 and 20, the office action maintains that Bullard discloses all the limitations of these claims except use as a seat cushion, but that Thomas teaches the use of expandable chambers of an air massage cushioning device in seat cushions of lounge chairs. According to the office action it would therefore have been obvious to incorporate the Bullard device into a seat “as suggested and taught by Thomas, for the purpose of providing continuous overall cushioned support to the user seated in the seating device while alternating the areas of supporting contact portions, which would improve blood circulation thereby reduce (sic) medical problems and/or fatigue caused by prolonged seating (sic).”

In response, the Applicant first maintains that Bullard teaches away from the incorporation of its constricting cuffs into a seat. Bullard teaches away by indicating that the invention is intended to influence circulation by “constricting limbs” (Col. 2, lines 42 and 43). Accordingly, to incorporate the Bullard cuffs into a seat cushion as taught by Thomas would prevent the cuffs from constricting limbs as Bullard intended.

For this reason the Applicant maintains that claims 1 and 20 are patentable over Bullard in view of Thomas et al. and that claims 2, 3, 9, 16, 19, 21-23, 25, and 26 are also patentable over the same references because they depend from allowable base claims and because, with regard to each of these claims, the Office Action either relies on a flawed shared advantage rationale to establish a prima facie case for obviousness or provides no supporting rationale at all.

The office action rejects claims 1-8, 10-15, 17, and 19-24 under 35 U.S.C. § 103(a) as being unpatentable over Gillen in view of Bullard and further in view of Thomas.

Regarding claim 1 (and 20?) the Action indicates that Gillen discloses the massage method as claimed except that the Gillen does not disclose the step of causing the exhaust system to actively draw fluid from the chambers.

In response, the applicant reiterates that that neither Gillen nor Bullard disclose a method that either includes or suggests the step of providing a seat including more than one expandable chamber as recited in claim 1 nor a expandable chambers incorporated into a seat as recited in claim 20. For this reason, the suggested combination of Gillen and Bullard et al. fail to reach the inventions recited in claims 1 and 20.

The Applicant also maintains that the Office Action's identification of a shared advantage ("providing a faster and more complete deflation when needed") falls short of presenting a prima facie case for obviousness. Shared advantage reasoning only states the obvious: that if the teachings of two prior art references are combined in such a way as to reach the claimed invention, they will realize the same advantages as the invention. Since this is ALWAYS and NECESSARILY true, it does nothing to distinguish obvious combinations from non-obvious combinations. By this test ALL combinations would be obvious. To present a prima facie case for obviousness, lacking an express teaching in the prior art, the Office Action would have to have shown that the problem Bullard solved through active evacuation was the same as or similar to the problem that the inventor of the present invention solved through active evacuation as recited in claims 1 and 20. *Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc.* 37 USPQ2d 1626, 1630 (Fed. Cir. 1996); *See also, e.g., In re Rinehart*, 189 USPQ 143, 149 (CCPA 1976); *In re Rouffet* at 1458; *Para-Ordinance Mfg. v. SGS Imports Intern., Inc.* 37 USPQ2d 1237, 1240 (Fed. Cir. 1995) (the prior art teaching must solve the same problem as the applicant sought to solve through the invention); *In re Oetiker* at 1446-1447; *Motorola, Inc. v. Interdigital Technology Corp.*, 43 USPQ2d 1481, 1489 (Fed. Cir. 1997) ("the record evidence supports the jury's implicit finding of a suggestion to combine the various references . . . [which] were related and involved similar problems and issues."); *In re Zurko*, 59 USPQ2d 1693 (Fed. Cir. 2001) ("to say that the missing step comes from the nature of the problem to be solved begs the question because the Board has failed to show that this problem had been previously identified anywhere in the prior art.")

Applying the Federal Circuit's "problem to be solved" analysis, the applicant notes that Bullard teaches the use of active evacuation to solve the problem of how to constrict limbs in a peristaltic-like sequence (See column 8, lines 38-46), i.e., how to simulate the wavelike muscular contractions of tubular structures by which contents are forced onward toward an opening. In contrast, the present inventors incorporate active evacuation to solve the problem of how to produce a direct and concentrated deflation necessary to produce a sufficiently concentrated massage effect on an occupant from beneath a seating surface. (See page 8, line 28 – page 9 line 2).

The Applicant previously argued that the commercial success of the invention, as set forth in the Declaration of Derren Rogers, militates against a finding of obviousness. In response, rather than question the evidence of commercial success, the present Office Action repeats its arguments used to support a prima facie case for obviousness. The whole point behind presenting evidence of commercial success is to establish that, regardless of what may appear in the prior art to be an obviousness solution to a problem, the fact that no one brought the supposedly obvious solution to market to gain commercial success demonstrates that it wasn't obvious after all. In other words, if the applicant's invention is rewarded with commercial success then, if the invention were obvious, someone else would have brought it to market first. Accordingly, the Applicant now maintains that it is unresponsive for the Office Action to respond by simply repeating the arguments it used to support its obviousness determination.

For these reasons the applicant maintains that claims 1 and 20 are patentable over Gillen in view of Bullard.

The applicant maintains that dependent claims 2-8, 10-15, 17, 19, and 21-24 are allowable because they depend from allowable base claims and because, with regard to each of these claims, the Office Action relies either on a flawed shared advantage rationale to support a prima facie case for obviousness or provides no rationale at all.

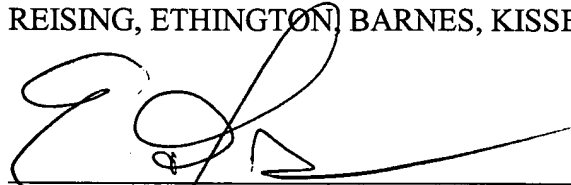
The applicant maintains that claims 1-17 and 19-26 are in allowable form. Please enter the amendment under the provisions of 37 CFR §1.116 and reconsider claims 1-17 and 19-26 in view of the foregoing amendments and remarks

August 8, 2005

I authorize the Assistant Commissioner to charge any deficiencies, or credit any overpayment associated with this communication to Deposit Account No. 50-0852. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

REISING, ETHINGTON, BARNES, KISSELLE, P.C.

A handwritten signature in dark ink, appearing to be "Eric T. Jones", written over a horizontal line.

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